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In re Application of
KENDALL, et al.
Application No.: 10/031,627
PCT No.: PCT/GB00/02257
Int. Filing Date: 09 June 2000
Priority Date: 16 July 1999
Attorney Docket No.: KEMP002
For: NEEDLELESS SYRINGE

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a)" filed in the United States Patent and Trademark Office (USPTO) on 12 December 2002.

BACKGROUND

On 09 June 2000, applicant filed international application PCT/GB00/02447, which claimed priority of an earlier application filed 16 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 January 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 January 2002.

On 15 January 2002, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement; a substitute specification and a First Preliminary Amendment. A signed oath or declaration as required by 35 U.S.C. 371(c)(4) was not filed.

On 05 April 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

25 November 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 05 April 2002 within the time period set therein and that above-identified application was abandoned as to the United States.

On 12 December 2002, applicant responded with the present petition accompanied by an executed combined declaration and power of attorney; a copy of a return postcard and a copy of an Express Mail receipt.

DISCUSSION

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, title of invention, and the docket number. The receipt identifies the application number as "10,031,627." Among the items listed on the receipt is "Combined Declaration and Power of Attorney (3pgs.)" The receipt is stamped "DT19 Rec'd PCT/PTO 26 SEP 2002" across its face. Thus it is clear that applicant filed an executed combined declaration and power of attorney on 26 September 2002. In addition, an examination of the fee records for the present application shows that the surcharge for filing an executed oath or declaration of the inventor later than thirty months from the priority date as well as the appropriate extension of time fee was charged to Deposit Account No.: 50-0815 on that date. For the reasons stated above, it is proper to grant applicant's petition at this time and accept the copy of the combined declaration and power of attorney filed 12 December 2002 as a substitute for the combined declaration and power of attorney originally filed 26 September 2002. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" mailed on 25 November 2002 is hereby **VACATED**.

The application has an international filing date of **09 June 2000** under 35 U.S.C. 363 and will be given a date of **26 September 2002** under 35 U.S.C. 371(c).

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This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.

A handwritten signature in black ink, appearing to read "Derek A. Putonen". The signature is fluid and cursive, with the first name "Derek" and last name "Putonen" clearly distinguishable.

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